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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,574	02/05/2002	Christopher James Brown	02-440	8161
34704 7590 07/03/2007 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			EXAMINER ROWAN, KURT C	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 07/03/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/068,574	<b>Applicant(s)</b> BROWN ET AL.	
	<b>Examiner</b> Kurt Rowan	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 21 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 and 23-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21, 23-26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tryon in view of Nelson (US 5983552) for substantially the same reasons as stated in the last Office Action.

The patents to Tryon and Nelson show decoys. Tryon has been discussed previously and shows adhesively mounting a photograph to the body of the decoy. Tryon does not show a molded main body since horizontal and vertical planar sheets are joined together. The patent to Nelson shows a rounded decoy body which has screen prints of the photograph onto the decoy. The patent to Nelson shows a decoy with a body formed from any suitable material as disclosed in column 3, lines 50-55. Nelson discloses that the legs, feet and frame 22 may be molded as disclosed in column 4, lines 41-42. Hence, it would have been within the level of ordinary skill in the art to mold the body of Nelson. In reference to claim 21, it would have been obvious to secure the photographs of Tryon to the decoy body without the use of adhesives such as by screen printing as shown by Nelson since merely one equivalent means for connecting the photograph to the decoy is contemplated. It further would have been obvious to provide Tryon with a molded body as shown by Nelson since merely one mechanically

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equivalent body is being substituted for another and the function is the same. In reference to claim 23, the decoy of Tryon can be considered to be flexible since all materials have some degree of flexibility. In reference to claim 24, Tryon shows embossed detail such as the eyes which are animal feature. In reference to claim 26, Tryon shows the decoy in resting position. In reference to claims 21 and 28, Nelson discloses that the body is made from a plastic material, and screen printing the photograph onto the exterior surface of the main body. Since Nelson discloses that the photograph is preferably a computer enhanced blend of several photographs, it appears that the photograph contains corrections. However, at any rate, it would have been obvious to employ corrected photographs to make the decoy look more life-like.

3. Claims 21, 23-26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson.

4. The patent to Nelson shows a waterfowl decoy as discussed above which shows all of the elements recited in claim 21 with the exception of the photographs including corrections to account from stretching of the aerial view and contraction of the aerial view. Nelson discloses in column 4, lines 57-63 that the image is generated by taking multiple photographs of the animal and blending them together to make a two dimensional photograph of a three dimensional animal. Nelson further states that the specific techniques for computer enhancing the image can be any suitable technique known in the art. Hence, in reference to claim 21, it would have been obvious to provide Nelson with photographs with corrections to account for stretching of the aerial view and contraction of the aerial view to make the decoy appear more life-like to

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waterfowl flying above to draw them into shooting range. In reference to claim 23, Nelson discloses that the decoy may be formed from a rigid solid foam such as polyurethane or styrene, but that any suitable material known in the art may be used. Since the terms "rigid" and "flexible" are relative, it is noted that another could refer to polyurethane and styrene as flexible. See *In re Leshin*, 125 USPQ 416. hence it would have been obvious to employ a flexible material

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tryon in view of Nelson as applied to claim 21 above, and further in view of Palmer.

The patents to Tryon, Nelson and Palmer show decoys. Tryon and Nelson have been discussed above and do not show the body having an orifice and the body further having a head with a flange which is insertable into the orifice. The patent to Palmer shows a decoy having a main body 12 with an orifice 44 and a head 14 with a flange 20, 22, 24 that is insertable in the orifice in the main body. In reference to claim 27, it would have been obvious to provide the decoy of Tryon as modified by Palmer with head having a flange so the could be portable and also that different heads could be employed to show different positions.

### ***Response to Arguments***

6. Applicant's arguments filed March 21, 2007 have been fully considered but they are not persuasive. Applicant argues that Tryon and Nelson do not show a molded body. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the photograph is incorporated into the main body) are not recited in the

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rejected claim(s). The claim states that the photograph is screen printed **onto** the main body. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's arguments concerning the flattened view have been addressed in the above rejection, but it should be pointed out that Nelson appears to contemplate the same idea noting that Nelson discloses computer enhancing an image. Nelson prints the photographic image onto a durable fabric which can be considered as part of the main body since the combination of the fabric and the solid foam material make up the main body. However, it would have been obvious to print the image directly on the main body since the function is the same and no showing of unexpected results was made.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR